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October 30, 2006
ORIGINAL
FILED/ACCEPTED
OCT 30 2006
Federal Communications Commission
Office of the Secretary

Via Hand Delivery

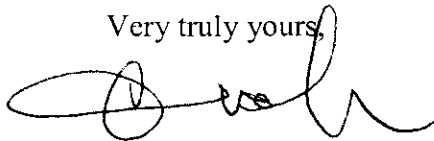
Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: WC Docket No. 06-172

Dear Ms. Dortch:

On behalf of Verizon, attached is an Opposition to Motion To Dismiss for filing in the above-captioned proceeding. In accordance with Rule 1.51(c)(1) and the Public Notice issued on October 18, 2006, we are providing an original and four copies. Please contact me at (202) 326-7930 if you have any questions regarding this filing.

Very truly yours,



Evan Leo

Attachment

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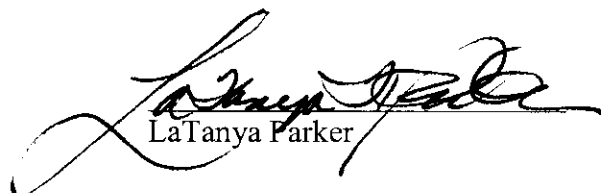
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CERTIFICATE OF SERVICE

I, LaTanya Parker, hereby certify that true and correct copies of the foregoing Opposition to Motion To Dismiss, in WC Docket No. 06-172, were delivered by hand and via e-mail, this 30th day of October 2006, to the individuals on the following list:

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LaTanya Parker

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Petitions of the Verizon Telephone Companies)
for Forbearance Pursuant to 47 U.S.C. § 160(c))
in the Boston, New York, Philadelphia,)
Pittsburgh, Providence and Virginia Beach)
Metropolitan Statistical Areas)

WC Docket No. 06-172

FILED/ACCEPTED

OCT 30 2006

Federal Communications Commission
Office of the Secretary

OPPOSITION TO MOTION TO DISMISS

The Commission should deny the Motion To Dismiss filed by ACN Communications Services, Inc. *et al.* (the "Movants").¹

The Movants seek to prevent the Commission from reviewing E911 data that show extensive competition throughout the MSAs for which Verizon has sought forbearance. The Commission has relied on E911 data in myriad past proceedings, dating back to numerous section 271 applications (including virtually every one of Verizon's), and including everything from the most recent forbearance petition involving Qwest in Omaha to the recent Verizon/MCI and SBC/AT&T mergers. Given the Commission's settled practice of relying on such data, Verizon submitted here the same kind of E911 data that the Commission has found valuable in the past. It is therefore improper to claim now, long after the fact, that the use of such data is prohibited.

The Movants claim that Verizon's submission of E911 data violates the confidentiality provision of Verizon's interconnection agreements with various competitive carriers. That is not true. The agreements are silent as to the submission of

¹ See Motion to Dismiss, filed by ACN Communications Services *et al.*, WC Docket No. 06-172 (filed Oct. 16, 2006).

E911 data, and while they prohibit certain uses of confidential “customer information,” none of the E911 data submitted here meet that description under the terms of the contracts. The E911 data that Verizon submitted contain no customer-level detail, but merely tally the raw number of E911 listings that various carriers have obtained.

Although the E911 data are not restricted “customer information” under the terms of Verizon’s interconnection agreements, Verizon has studiously safeguarded competitively sensitive, carrier-specific data. Verizon has submitted E911 data subject to the Protective Order in this proceeding, and has not given any individual carrier information about another carrier’s E911 listings. Verizon also has not used these data for any marketing or other business practice. Verizon has merely submitted these data to a regulatory authority. Competing carriers themselves have long argued they should be permitted to provide regulators with confidential data that they obtain pursuant to interconnection agreements or negotiations. In any event, even aside from the fact that Verizon has not violated its interconnection agreements, disputes arising under such agreements should be brought before a state commission in the first instance.

The Motion also alleges that Verizon has misused confidential information from the Verizon/MCI merger proceeding, in violation of the protective order in that proceeding. That is not true. None of the information that Verizon submitted here was obtained pursuant to the protective order in that prior proceeding.

ARGUMENT

I. THE COMMISSION HAS CONSISTENTLY RELIED ON THE SAME KIND OF E911 DATA THAT VERIZON SUBMITTED HERE

The Movants seek to exclude E911 data from consideration here because these data show that competition is extensive throughout the MSAs in which Verizon has sought forbearance. The Commission should reject this ploy.²

It is well-established Commission practice to rely on E911 data in analyzing competition. The use of E911 data dates back to at least the first section 271 application, and the Commission continued to rely on such data throughout the section 271 process, including applications involving Verizon as well as other Bell companies.³ More recently, the Commission relied on such data in the Omaha MSA forbearance proceeding. In that proceeding, the Commission relied on E911 data that Qwest submitted to corroborate the market share estimates that were derived from other data submitted by

² The Commission should not only reject requests to blind itself to relevant data, but also should require carriers who wish to participate in this proceeding to produce relevant data of their own. *See Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. §160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd 19415, ¶ 28 (2005) (“*Omaha Forbearance Order*”) (relying on data that Cox submitted).

³ *See, e.g., Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, Memorandum Opinion and Order, 15 FCC Rcd 3953, ¶ 14 & nn.25-28 (1999); *Application by Verizon Maryland Inc., et al. for Authorization To Provide In-Region, InterLATA Services in Maryland, Washington, D.C., and West Virginia*, Memorandum Opinion and Order, 18 FCC Rcd 5212, ¶ 12 & n.45 (2003); *Application by SBC Communications Inc., et al. for Authorization To Provide In-Region, InterLATA Services in California*, Memorandum Opinion and Order, 17 FCC Rcd 25650, ¶ 3 & n.7 (2002); *Joint Application by SBC Communications Inc., et al. for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, Memorandum Opinion and Order, 16 FCC Rcd 6237, ¶ 42 (2001); *Application by Qwest Communications International, Inc. for Authorization To Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming*, Memorandum Opinion and Order, 17 FCC Rcd 26303, ¶ 32 & n.76 (2002).

third parties. *See Omaha Forbearance Order* ¶ 29 (“Our market share estimates are also supported by Qwest’s evidence regarding E911 data.”). Similarly, in the recent Verizon/MCI and SBC/AT&T merger proceedings, the Commission derived an estimate of total residential local access lines in each relevant geographic market “by summing the number of wireline local access lines (*i.e.*, residential resold lines, residential UNE-P lines, non-Verizon residential E-911 listings, [and] Verizon’s residential access lines) and an estimate of the number of residential wireless-only lines.”⁴ The Department of Justice⁵ and numerous state commissions⁶ have also utilized E911 data for similar purposes.

In light of the Commission’s established practice, Verizon submitted here the same type of E911 data on which the Commission has previously relied. Far from acting improperly, Verizon provided the Commission with precisely the kind of information it has found valuable in the past. The Movants therefore have no legitimate basis to claim that it was improper for Verizon to use this information. To the contrary, the use of E911

⁴ *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18433, ¶ 103, n.307 (2005); *see also SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18290, ¶ 102, n.308 (2005).

⁵ *See, e.g.*, Evaluation of the United States Department of Justice, *Joint Application by SBC Communications Inc., et al. for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, at 4, n.9 (Dec. 4, 2000) (counting CLEC access lines for all modes of entry as the sum of E911 data, UNE-P lines and resale).

⁶ *See, e.g.*, Report of Alexander F. Skirpan, Jr., Hearing Examiner, *Verizon Virginia Inc. To Verify Compliance with the Conditions Set Forth in 47 U.S.C. § 271(c)*, Case No. PUC-2002-00046 (VA SCC July 12, 2002).

data is a well-established practice,⁷ and has been an important source of information in many key regulatory proceedings over the course of many years.

The regular use of E911 data in past Commission and other regulatory proceedings also puts the lie to the Movants' claim that allowing these data to be used "may discourage carriers or their customers from submitting timely and accurate information to the database operators." Motion at 5. As an initial matter, CLECs *have* continued to submit such listings for many years, despite such supposed concerns. Moreover, CLECs have a legal obligation and social responsibility to their customers to submit E911 listings, and it is hard to imagine that CLECs would skirt these serious responsibilities merely to game regulatory proceedings.

II. VERIZON'S SUBMISSION OF E911 DATA IS PERMISSIBLE UNDER ITS INTERCONNECTION AGREEMENTS

The Movants claim that Verizon's use of E911 data is "barred by express terms of its interconnection agreements with CLECs." Motion at 3. That is not true. While the E911 information that Verizon submitted may be competitively sensitive to individual carriers – and Verizon has therefore protected such data by submitting it subject to the Protective Order in this proceeding – this information does not fall within the specific types of confidential information whose use is limited by the interconnection agreements.

⁷ In October 2005, the Virginia Corporation Commission rejected XO's and Cavalier's motions to strike from the record the E911 data that Verizon submitted. The Commission noted the parties "provide[] no authority to support [their] requested remedy. XO asserts, for example, that Verizon's use of such data violates interconnection agreements and may represent a criminal conversion. Even if correct, XO cites no authority to establish that the specific information is incompetent, inaccurate, unreliable, or otherwise inadmissible." *Joint Petition of Verizon Communications Inc. and MCI, Inc. for Approval of Agreement and Plan of Merger*, Order Granting Approval, Case No. PUC-2005-00051, at 33 (VA SCC Oct. 6, 2005).

Regardless, Verizon's submission of such data is not a "use" prohibited by these agreements.

Like the E911 data that Verizon and other carriers have relied on for years in prior Commission proceedings, the E911 data submitted here do not contain any customer-level detail. These data merely provide the raw number of E911 listings that certain carriers have obtained, together with an indication of whether those are business or residential listings. Other than this general residential/business classification, the data do not contain any information about individual customers – such as their names, addresses, the services they purchase, or anything else that could be deemed individual customer information.

There is nothing in the language of Verizon's interconnection agreements that imposes a prohibition on the submission of E911 data. First, there is nothing in Verizon's agreements that specifically addresses the submission of E911 data. Although Verizon's standard agreements describe the procedures that Verizon will follow in providing access to the E911 database (where Verizon is responsible for managing that database), those provisions do not discuss the submission of E911 data that Verizon obtains from those processes. *See* Verizon Template Interconnection Agreement, 911 Att. § 2 (attached hereto as Exhibit 1).

Second, the definition of "confidential information" in Verizon's standard agreement does not specifically mention E911 data, and such data also do not fall within any of that definition's broader descriptions. The only definition that is even conceivably

relevant is the description of “customer information.”⁸ But as noted above, the E911 data that Verizon submitted here stripped away any customer-level detail from the E911 listings that could be covered under this provision. Thus, these data cannot properly be considered “customer information” per the terms of Verizon’s agreements.⁹

The result is the same under the agreement with Cavalier that the Movants cite. Although the Movants never make clear which portion of that agreement’s definition of “confidential information” they think covers the E911 data at issue here, they italicize the passage in that definition that reads: “Customer specific, facility specific, or usage specific information, other than Customer information communicated for the purpose of publication or directory database inclusion.” Motion at 4 (quoting Cavalier’s interconnection agreement § 28.5.1). But, as noted above, the E911 data that Verizon submitted do not fit that description. There is nothing “customer specific” about the E911 data that Verizon submitted here.

In addition to the fact that the E911 data are not “confidential” under the terms of Verizon’s agreements, Verizon has not “used” these data in a manner the agreements prohibit. Verizon has not used any of the E911 data for any marketing or other business purpose. Verizon has instead submitted information to a regulatory authority.

⁸ The other types of confidential information are: “books, records, documents, and other information disclosed in an audit”; “forecasting information”; “information related to specific facilities or equipment”; “information that is in written, graphic, electromagnetic, or other tangible form, and marked at the time of disclosure as ‘Confidential’ or ‘Proprietary’”; and “information that is communicated orally or visually and declared to the Receiving Party at the time of disclosure, and by written notice with a statement of the information given to the Receiving Party within ten (10) days after disclosure, to be ‘Confidential’ or ‘Proprietary.’” Verizon Template Interconnection Agreement, § 10.

⁹ Moreover, the Movants fail to address the provisions of the interconnection agreements that permit the use of confidential information for certain enumerated purposes. *See, e.g.*, Verizon Template Interconnection Agreement, § 10.5. To the extent these exceptions apply, they provide an independent basis to reject the Movants’ argument.

Competing carriers themselves have long argued that confidential information and negotiation history regarding interconnection agreements may be submitted to regulatory authorities. Moreover, Verizon has carefully protected the confidentiality of such data. Verizon has submitted these data subject to the Protective Order in this proceeding, and has not provided individual carriers with E911 listings or data for any other individual carrier.

In any event, concerns about whether Verizon's submission of confidential information violate the terms of its interconnection agreements are properly brought before state commissions in the first instance.¹⁰ Moreover, even if the Commission had the power to hear a complaint in these circumstances, it should defer to responsible state commissions as a matter of comity.¹¹

Finally, the Movants also claim that Verizon has misappropriated and misused confidential information obtained as part of the Verizon/MCI merger proceeding, in violation of the Protective Order. *See* Motion at 5. The Movants base this claim on paragraph 11 of the Declaration of Quintin Lew, Judy Verses, and Patrick Garzillo, which states: "During the course of the Verizon/MCI merger, for example, Verizon received

¹⁰ *See Starpower Communications, LLC Petition for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996*, Memorandum Opinion and Order, 15 FCC Rcd 11277, ¶ 6 (2000) ("a dispute arising from interconnection agreements and seeking interpretation and enforcement of those agreements is within the states' 'responsibility' under section 252."); *see also Iowa Utils. Bd. v FCC*, 120 F.3d 753, 804 (8th Cir. 1997), *aff'd in part, rev'd in part on other grounds sub nom., AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999) ("state commissions retain the primary authority to enforce the substantive terms of [interconnection] agreements" and "nothing in the Act even suggests that the FCC has the authority to enforce the terms of negotiated or arbitrated agreements.").

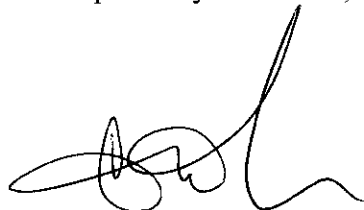
¹¹ *See, e.g., MCI Worldcom Network Services, Inc. v. FCC*, 274 F.3d 542 (D.C. Cir. 2001) ("Regardless of whether the FCC could offer some additional relief, it would be *entirely reasonable* for the FCC to defer to the states as a matter of comity.") (emphasis added).

other confidential sources of data that showed additional CLEC fiber beyond what is contained in the GeoTel data.” As an initial matter, Verizon did not submit here any of the data that it obtained during the course of the Verizon/MCI proceeding. Moreover, the Movants wrongly assume that the “other confidential sources of data” that Verizon obtained in that prior proceeding were obtained under the protective order in that proceeding. They were not. The data to which the Joint Declaration refer were independently obtained from another carrier.

CONCLUSION

For the reasons set forth herein, the Commission should deny the Motion To Dismiss.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Shakin', with a long, sweeping horizontal line extending to the right.

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Attorneys for Verizon

Dated: October 30, 2006

[AMENDED, EXTENDED AND RESTATED] AGREEMENT

by and between

*****CLEC Full Name TXT*****

and

*****VERIZON COMPANY FULL NAME 1 TXT*****

FOR THE STATE OF

[STATE]

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[AMENDED, EXTENDED AND RESTATED] AGREEMENT

PREFACE

This [Amended, Extended and Restated] Agreement ("Agreement") shall be deemed effective as of ***Date*** (the "Effective Date"), between ***CLEC Full Name TXT*** ("***CLEC Acronym TXT***"), a corporation organized under the laws of the ***CLEC Incorporation State-Commonwealth TXT*** of ***CLEC State of Incorporation MC***, with offices at ***CLEC Address 1 TXT***, ***CLEC City TXT***, ***CLEC State MC*** ***CLEC Zip TXT*** and ***Verizon Company Full Name 1 TXT*** ("Verizon"), a corporation organized under the laws of the ***Incorporation State-Commonwealth TXT*** of ***Incorporation State TXT*** with offices at ***Verizon Address TXT*** (Verizon and ***CLEC Acronym TXT*** may be referred to hereinafter, each, individually as a "Party", and, collectively, as the "Parties").

GENERAL TERMS AND CONDITIONS

In consideration of the mutual promises contained in this Agreement, and intending to be legally bound, pursuant to Section 252 of the Act, Verizon and ***CLEC Acronym TXT*** hereby agree as follows:

1. The Agreement

- 1.1 This Agreement includes: (a) the Principal Document; (b) the Tariffs of each Party applicable to the Services that are offered for sale by it in the Principal Document (which Tariffs are incorporated into and made a part of this Agreement by reference); and, (c) an Order by a Party that has been accepted by the other Party.
- 1.2 Except as otherwise expressly provided in the Principal Document (including, but not limited to, the Pricing Attachment), conflicts among provisions in the Principal Document, Tariffs, and an Order by a Party that has been accepted by the other Party, shall be resolved in accordance with the following order of precedence, where the document identified in subsection "(a)" shall have the highest precedence: (a) the Principal Document; (b) the Tariffs; and, (c) an Order by a Party that has been accepted by the other Party. The fact that a provision appears in the Principal Document but not in a Tariff, or in a Tariff but not in the Principal Document, shall not be interpreted as, or deemed grounds for finding, a conflict for the purposes of this Section 1.2.
- 1.3 This Agreement constitutes the entire agreement between the Parties on the subject matter hereof, and supersedes any prior or contemporaneous agreement, understanding, or representation, on the subject matter hereof, provided, however, notwithstanding any other provision of this Agreement or otherwise, this Agreement is an amendment, extension and restatement of the Parties' prior interconnection and resale agreement(s), if any, and, as such, this Agreement is not intended to be, nor shall it be construed to create, a novation or accord and satisfaction with respect to any prior interconnection or resale agreements and, accordingly, all monetary obligations of the Parties to one another under any prior interconnection or resale agreements shall remain in full force and effect and shall constitute monetary obligations of the Parties under this Agreement (provided, however, that nothing contained in this Agreement shall convert any claim or debt that would otherwise constitute a prepetition claim or debt in a bankruptcy case into a postpetition claim or debt). In connection with the foregoing, Verizon expressly reserves all of its rights under the Bankruptcy Code and Applicable Law to seek or oppose any relief in respect of the

assumption, assumption and assignment, or rejection of any interconnection or resale agreements between Verizon and ***CLEC Acronym TXT***.

- 1.4 Except as otherwise provided in the Principal Document, the Principal Document may not be waived or modified except by a written document that is signed by the Parties. Subject to the requirements of Applicable Law, a Party shall have the right to add, modify, or withdraw, its Tariff(s) at any time, without the consent of, or notice to, the other Party.

2. Term and Termination

- 2.1 This Agreement shall be effective as of the Effective Date and, unless cancelled or terminated earlier in accordance with the terms hereof, shall continue in effect until ***Date CO*** (the "Initial Term"). Thereafter, this Agreement shall continue in force and effect unless and until cancelled or terminated as provided in this Agreement.
- 2.2 Either ***CLEC Acronym TXT*** or Verizon may terminate this Agreement effective upon the expiration of the Initial Term or effective upon any date after expiration of the Initial Term by providing written notice of termination at least ninety (90) days in advance of the date of termination.
- 2.3 If either ***CLEC Acronym TXT*** or Verizon provides notice of termination pursuant to Section 2.2 and on or before the proposed date of termination either ***CLEC Acronym TXT*** or Verizon has requested negotiation of a new interconnection agreement, unless this Agreement is cancelled or terminated earlier in accordance with the terms hereof (including, but not limited to, pursuant to Section 12), this Agreement shall remain in effect until the earlier of: (a) the effective date of a new interconnection agreement between ***CLEC Acronym TXT*** and Verizon; or, (b) the date one (1) year after the proposed date of termination.
- 2.4 If either ***CLEC Acronym TXT*** or Verizon provides notice of termination pursuant to Section 2.2 and by 11:59 PM Eastern Time on the proposed date of termination neither ***CLEC Acronym TXT*** nor Verizon has requested negotiation of a new interconnection agreement, (a) this Agreement will terminate at 11:59 PM Eastern Time on the proposed date of termination, and (b) the Services being provided under this Agreement at the time of termination will be terminated, except to the extent that the Purchasing Party has requested that such Services continue to be provided pursuant to an applicable Tariff or Statement of Generally Available Terms (SGAT).

3. Glossary and Attachments

The Glossary and the following Attachments are a part of this Agreement:

Additional Services Attachment
 Interconnection Attachment
 Resale Attachment
 Network Elements Attachment
 Collocation Attachment
 911 Attachment
 Pricing Attachment

4. Applicable Law

- 4.1 The construction, interpretation and performance of this Agreement shall be governed by (a) the laws of the United States of America and (b) the laws of the State of [State], without regard to its conflicts of laws rules. All disputes relating to this Agreement shall be resolved through the application of such laws.
- 4.2 Each Party shall remain in compliance with Applicable Law in the course of performing this Agreement.
- 4.3 Neither Party shall be liable for any delay or failure in performance by it that results from requirements of Applicable Law, or acts or failures to act of any governmental entity or official.
- 4.4 Each Party shall promptly notify the other Party in writing of any governmental action that limits, suspends, cancels, withdraws, or otherwise materially affects, the notifying Party's ability to perform its obligations under this Agreement.
- 4.5 If any provision of this Agreement shall be invalid or unenforceable under Applicable Law, such invalidity or unenforceability shall not invalidate or render unenforceable any other provision of this Agreement, and this Agreement shall be construed as if it did not contain such invalid or unenforceable provision; provided, that if the invalid or unenforceable provision is a material provision of this Agreement, or the invalidity or unenforceability materially affects the rights or obligations of a Party hereunder or the ability of a Party to perform any material provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law.
- 4.6 If any legislative, regulatory, judicial or other governmental decision, order, determination or action, or any change in Applicable Law, materially affects any material provision of this Agreement, the rights or obligations of a Party hereunder, or the ability of a Party to perform any material provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law. If within thirty (30) days of the effective date of such decision, determination, action or change, the Parties are unable to agree in writing upon mutually acceptable revisions to this Agreement, either Party may pursue any remedies available to it under this Agreement, at law, in equity, or otherwise, including, but not limited to, instituting an appropriate proceeding before the Commission, the FCC, or a court of competent jurisdiction, without first pursuing dispute resolution in accordance with Section 14 of this Agreement.
 - 4.6.1 Notwithstanding Section 4.6 above, to the extent Verizon is required by a change in Applicable Law to provide to ***CLEC Acronym TXT*** a Service that is not offered under this Agreement to ***CLEC Acronym TXT***, the terms, conditions and prices for such Service (including, but not limited to, the terms and conditions defining the Service and stating when and where the Service will be available and how it will be used, and terms, conditions and prices for pre-ordering, ordering, provisioning, repair, maintenance and billing) shall be as provided in an applicable Verizon Tariff, or, in the absence of an applicable Verizon Tariff, as mutually agreed by the Parties in a written amendment to the Agreement that, upon the request of either Party, the Parties shall negotiate in accordance with the requirements of

Section 252 of the Act. In no event shall Verizon be required to provide any such Service in the absence of such a Verizon Tariff or amendment.

- 4.7 Notwithstanding anything in this Agreement to the contrary, if, as a result of any legislative, judicial, regulatory or other governmental decision, order, determination or action, or any change in Applicable Law, Verizon is not required by Applicable Law to provide any Service, payment or benefit, otherwise required to be provided to ***CLEC Acronym TXT*** hereunder, then Verizon may discontinue the provision of any such Service, payment or benefit, and ***CLEC Acronym TXT*** shall reimburse Verizon for any payment previously made by Verizon to ***CLEC Acronym TXT*** that was not required by Applicable Law. Verizon will provide thirty (30) days prior written notice to ***CLEC Acronym TXT*** of any such discontinuance of a Service, unless a different notice period or different conditions are specified in this Agreement (including, but not limited to, in the Networks Element Attachment or an applicable Tariff) or Applicable Law for termination of such Service in which event such specified period and/or conditions shall apply. For the avoidance of any doubt, this Section 4.7 is self-effectuating and no amendment to this Agreement shall be required to implement it.

5. Assignment

Neither Party may assign this Agreement or any right or interest under this Agreement, nor delegate any obligation under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any attempted assignment or delegation in violation of this Section 5 shall be void and ineffective and constitute default of this Agreement.

6. Assurance of Payment

- 6.1 Upon request by Verizon, ***CLEC Acronym TXT*** shall, at any time and from time to time, provide to Verizon adequate assurance of payment of amounts due (or to become due) to Verizon hereunder.
- 6.2 Assurance of payment of charges may be requested by Verizon if ***CLEC Acronym TXT*** (a) prior to the Effective Date, has failed to timely pay a bill rendered to ***CLEC Acronym TXT*** by Verizon or its Affiliates, (b) on or after the Effective Date, fails to timely pay a bill rendered to ***CLEC Acronym TXT*** by Verizon or its Affiliates, (c) in Verizon's reasonable judgment, at the Effective Date or at any time thereafter, is unable to demonstrate that it is creditworthy, or (d) admits its inability to pay its debts as such debts become due, has commenced a voluntary case (or has had a case commenced against it) under the U.S. Bankruptcy Code or any other law relating to bankruptcy, insolvency, reorganization, winding-up, composition or adjustment of debts or the like, has made an assignment for the benefit of creditors or is subject to a receivership or similar proceeding.
- 6.3 Unless otherwise agreed by the Parties, the assurance of payment shall consist of an unconditional, irrevocable standby letter of credit naming Verizon as the beneficiary thereof and otherwise in form and substance satisfactory to Verizon from a financial institution acceptable to Verizon. The letter of credit shall be in an amount equal to two (2) months anticipated charges (including, but not limited to, both recurring and non-recurring charges), as reasonably determined by Verizon, for the Services to be provided by Verizon to ***CLEC Acronym TXT*** in connection with this Agreement. If ***CLEC Acronym TXT*** meets the condition in subsection 6.2(d) above or has failed to timely pay two or more bills

rendered by Verizon or a Verizon Affiliate in any twelve (12)-month period, Verizon may, at its option, demand (and ***CLEC Acronym TXT*** shall provide) additional assurance of payment, consisting of monthly advanced payments of estimated charges as reasonably determined by Verizon, with appropriate true-up against actual billed charges no more frequently than once per Calendar Quarter.

- 6.4 [Intentionally Left Blank].
- 6.5 [Intentionally Left Blank].
- 6.6 Verizon may (but is not obligated to) draw on the letter of credit upon notice to ***CLEC Acronym TXT*** in respect of any amounts to be paid by ***CLEC Acronym TXT*** hereunder that are not paid within thirty (30) days of the date that payment of such amounts is required by this Agreement.
- 6.7 If Verizon draws on the letter of credit, upon request by Verizon, ***CLEC Acronym TXT*** shall provide a replacement or supplemental letter of credit conforming to the requirements of Section 6.3.
- 6.8 Notwithstanding anything else set forth in this Agreement, if Verizon makes a request for assurance of payment in accordance with the terms of this Section, then Verizon shall have no obligation thereafter to perform under this Agreement until such time as ***CLEC Acronym TXT*** has provided Verizon with such assurance of payment.
- 6.9 The fact that a letter of credit is requested by Verizon hereunder shall in no way relieve ***CLEC Acronym TXT*** from compliance with the requirements of this Agreement (including, but not limited to, any applicable Tariffs) as to advance payments and payment for Services, nor constitute a waiver or modification of the terms herein pertaining to the discontinuance of Services for nonpayment of any amounts payment of which is required by this Agreement.

7. Audits

- 7.1 Except as may be otherwise specifically provided in this Agreement, either Party ("Auditing Party") may audit the other Party's ("Audited Party") books, records, documents, facilities and systems for the purpose of evaluating the accuracy of the Audited Party's bills. Such audits may be performed once in each Calendar Year; provided, however, that audits may be conducted more frequently (but no more frequently than once in each Calendar Quarter) if the immediately preceding audit found previously uncorrected net inaccuracies in billing in favor of the Audited Party having an aggregate value of at least \$1,000,000.
- 7.2 The audit shall be performed by independent certified public accountants selected and paid by the Auditing Party. The accountants shall be reasonably acceptable to the Audited Party. Prior to commencing the audit, the accountants shall execute an agreement with the Audited Party in a form reasonably acceptable to the Audited Party that protects the confidentiality of the information disclosed by the Audited Party to the accountants. The audit shall take place at a time and place agreed upon by the Parties; provided, that the Auditing Party may require that the audit commence no later than sixty (60) days after the Auditing Party has given notice of the audit to the Audited Party.
- 7.3 Each Party shall cooperate fully in any such audit, providing reasonable access to any and all employees, books, records, documents, facilities and systems, reasonably necessary to assess the accuracy of the Audited Party's bills.

- 7.4 Audits shall be performed at the Auditing Party's expense, provided that there shall be no charge for reasonable access to the Audited Party's employees, books, records, documents, facilities and systems necessary to assess the accuracy of the Audited Party's bills.

8. Authorization

- 8.1 Verizon represents and warrants that it is a corporation duly organized, validly existing and in good standing under the laws of the ***Incorporation State-Commonwealth TXT*** of ***Incorporation State TXT*** and has full power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement.
- 8.2 ***CLEC Acronym TXT*** represents and warrants that it is a corporation duly organized, validly existing and in good standing under the laws of the ***CLEC Incorporation State-Commonwealth TXT*** of ***CLEC State of Incorporation MC***, and has full power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement.
- 8.3 ***CLEC Acronym TXT*** Certification.

Notwithstanding any other provision of this Agreement, Verizon shall have no obligation to perform under this Agreement until such time as ***CLEC Acronym TXT*** has obtained such FCC and Commission authorization as may be required by Applicable Law for conducting business in the State of [State]. ***CLEC Acronym TXT*** shall not place any Orders under this Agreement until it has obtained such authorization. ***CLEC Acronym TXT*** shall provide proof of such authorization to Verizon upon request.

9. Billing and Payment; Disputed Amounts

- 9.1 Except as otherwise provided in this Agreement, each Party shall submit to the other Party on a monthly basis in an itemized form, statement(s) of charges incurred by the other Party under this Agreement.
- 9.2 Except as otherwise provided in this Agreement, payment of amounts billed for Services provided under this Agreement, whether billed on a monthly basis or as otherwise provided in this Agreement, shall be due, in immediately available U.S. funds, on the later of the following dates (the "Due Date"): (a) the due date specified on the billing Party's statement; or (b) twenty (20) days after the date the statement is received by the billed Party. Payments shall be transmitted by electronic funds transfer.
- 9.3 If any portion of an amount billed by a Party under this Agreement is subject to a good faith dispute between the Parties, the billed Party shall give notice to the billing Party of the amounts it disputes ("Disputed Amounts") and include in such notice the specific details and reasons for disputing each item. A Party may also dispute prospectively with a single notice a class of charges that it disputes. Notice of a dispute may be given by a Party at any time, either before or after an amount is paid, and a Party's payment of an amount shall not constitute a waiver of such Party's right to subsequently dispute its obligation to pay such amount or to seek a refund of any amount paid. The billed Party shall pay by the Due Date all undisputed amounts. Billing disputes shall be subject to the terms of Section 14, Dispute Resolution.
- 9.4 Charges due to the billing Party that are not paid by the Due Date, shall be subject to a late payment charge. The late payment charge shall be in an